

Plaintiffs' mistake does not constitute good cause under Rule 4(m) as required for a mandatory extension of time. Under Rule 4(m), the court also has the discretionary power to extend the 4(m) time limit. *See Horenkamp v. Van Winkle & Co.*, 402 F.3d 1129 (11th Cir. 2005). Before dismissal, the court is required to consider whether other circumstances justify a discretionary extension of time. *See*

Lepone-Dempsey v. Carroll Cty. Comm'rs, 476 F.3d 1277, 1282 (11th Cir. 2007) (reversing and remanding for failure to consider a discretionary extension). At minimum, the court must consider whether the case meets the examples cited in *Horenkamp*: “if the applicable statute of limitations would bar the refiled action, or if the defendant is evading service or conceals a defect in attempted service.” *Horenkamp*, 402 F.3d at 1132–33.

Plaintiffs have not provided sufficient basis for concluding that the statute of limitations would bar a subsequent refiling or for concluding that any Defendant has evaded service or concealed a defect in attempted service. Neither Plaintiffs’ mistake of law nor actual notice to Defendants constitutes sufficient basis for an extension of time and so the court declines to exercise its discretion in that regard.

For these reasons, it is ORDERED that this case is DISMISSED without prejudice for Plaintiffs’ failure to properly serve any Defendant within the period specified in Rule 4(m).

A final judgment will be entered separately.

DONE this 12th day of August, 2021.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE